(1) S.B. CIVIL MISC. APPEAL NO. 524/2007
(The New India Assurance Co.Ltd. Vs. Smt.Mamta & ors.)

(2) S.B.CIVIL MISC. APPEAL NO.525/2007
(The New India Assurance Co. Ltd. Vs. Smt.Koderi & ors.)

(3) S.B.CIVIL MISC.APPEAL NO.526/2007
(The New India Assurance Co. Ltd. Vs. Smt.Dhuli & ors.)

Date of Order :: 12th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.R.K.Mehta for the appellant-insurer
Mr.Mahendra Trivedi for the respondents-claimants

In these three appeals, CMA Nos.524/2007, 525/2007 and 526/2007 preferred by the insurer of the vehicle involved in accident against the common award dated 21.09.2006 made by the Motor Accidents Claims Tribunal, Kushalgarh Sub-Division, Banswara respectively in Claim Case Nos.62/2003, 65/2003 and 61/2003 essentially questioning the quantum of compensation awarded, affected parties i.e., the claimants have put appearance in caveat; and in view of consensus stated by the learned counsel for parties, the matters are disposed of finally by this common order while dispensing with service on other proforma respondents.

In Claim Case No.62/2003 (CMA No.524/2007) for awarding compensation to mother, wife and two minor children of the vehicular accident victim Mahendra Kumar,

about 32-35 years in age, the Tribunal has referred to the secondary school certificate of the deceased and observed that he was teaching in a private school and was working for commission with Peerless Company; and has taken his income at Rs.3,000/- per month and after deducting one-third on his personal expenditure has taken loss of contribution for the claimants at Rs.2,000/- per month. But then, the Tribunal has proceeded to observe that the deceased would have contributed to the family for next 25 years and has, therefore, taken pecuniary loss at Rs.6,00,000/- (2000x12x25); and providing Rs.5,000/- towards funeral and Rs.5,000/- towards other expenses has allowed compensation in the sum of Rs.6,10,000/-.

In Claim Case No.65/2003 (CMA No.525/2007) for awarding compensation to the wife and five minor childern of the victim Gautam, about 35 years in age and working as a driver, the Tribunal has taken his monthly income at Rs.2,100/- and monthly contribution for the claimants at Rs.1,400/- after deducting one-third on his personal expenditure; but again has referred to a period of 25 years of contribution by the deceased and has, therefore, assessed pecuniary loss at Rs.4,20,000/- (1400x12x25). The Tribunal has further allowed Rs.23,000/- towards non-pecuniary loss and Rs.7,000/- towards funeral and transportation expenses and in this

manner has allowed compensation in the sum of Rs.4,50,000/-.

In Claim Case No.61/2003 (CMA No.526/2007) for awarding compensation on account of accidental death of the victim Vinod Vyas to his mother and brother, the Tribunal has noticed earning of the deceased at Rs.1,800/- per month as a teacher in private school and his contribution at Rs. 1,200/- per month after deducting one-third on his personal expenditure; and with reference to his age at 25 years has taken his likely contribution for 35 years and has thereby assessed pecuniary loss at Rs.5,04,000/- (1200x12x35). The Tribunal has further allowed Rs.11,000/- for treatment and Rs.5,000/- towards funeral expenses and in this manner has allowed compensation in the sum of Rs.5,20,000/-.

The insurer has assailed the awards aforesaid being exorbitant and excessive and being against settled legal principles. On the matter being taken up for motion hearing, Mr. Mahendra Trivedi learned counsel appearing in caveat for the claimants in all these appeals, in all fairness conceded that the award on quantification of compensation in each case stands on a higher side and submitted that the awards in question may be re-stated allowing compensation in the sum of Rs.4,35,000/- in Claim Case No.62/2003, Rs.3,35,000/- in Claim Case No.65/2003 and Rs.2,25,000/- in

Claim Case No.61/2003 with interest at the rate of 6% per annum from the date of filing of respective claim applications. Learned counsel Mr.R.K.Mehta appearing for the appellant-insurer in equal fairness has agreed to the proposition put forward by Mr.Trivedi and submitted that the awards may be suitably modified. Learned counsel have placed on record the terms of settlement arrived at between the parties for suitable modification of the award.

Having examined the impugned award, this Court is satisfied that the figures arrived at by the parties in consensus remain that of just compensation admissible and the award in question deserves to be modified accordingly.

The Tribunal seems to have totally ignored the fundamental principles governing the award of compensation and has proceeded to quantify pecuniary loss with application of multiplier of 25 in Claim Case No.62/2003 and so also in Claim Case No.65/2003; and with application of multiplier of 35 for the mother and brother of the deceased in Claim Case No.61/2003. The award as made by the Tribunal in each case being much in excess of the reasonable amount of compensation could not have been approved by this Court.

In Claim Case No.62/2003 while going with the multiplicand as adopted by the Tribunal at Rs.24,000/- per annum, this Court is clearly of opinion that in view of the age

of deceased at about 35 years, even if maximum side multiplier of 17 is allowed, the amount of pecuniary loss cannot be more than Rs.4,08,000/-. The claimants are wife, mother and two minor children of the deceased and if the wife is allowed Rs.10,000/- towards loss of consortium and other claimants are allowed Rs.5,000/- each for loss of love, affection, guidance and services of the deceased, non-pecuniary loss can be allowed at Rs.25,000/-; and with further amount of Rs.2,000/- towards funeral expenses total amount towards compensation for the claimants of this case comes to Rs.4,35,000/- and, therefore, the figure agreed to by the parties appears to be just and reasonable.

In Claim Case No.65/2003, though the income of the deceased has been taken at Rs.2,100/- per month but in view of larger number of dependents including wife and five minor children, this Court is of opinion that instead of deducting one-third on personal expenditure of the deceased, it shall be appropriate to deduct 25% on that count and loss of dependency can be taken at Rs.1,575/- per month, i.e. Rs.18,900/- per annum; and when the same is capitalised by application of multiplier of 16, pecuniary loss comes to Rs.3,02,400/- and while allowing further Rs.30,000/- towards non-pecuniary loss and Rs.2,600/- towards funeral expenses, the figure of Rs.3,35,000/- agreed to by the parties in this

case appears to be that of just compensation.

In Claim Case No.61/2003 the deceased was an unmarried person and in his relation the loss of dependency for the claimants can be taken at Rs.1,200/- per month i.e. Rs.14,400/- per annum only after taking his average income at Rs. 2,400/- per month for looking to the future likelihood of the deceased getting married and larger part of his income getting diverted to his own family, not more than one-half of estimated income could be taken towards loss of contribution to the claimants. In any case, and even going by the multiplicand adopted by the Tribunal, in view of the age of the mother of the deceased at about 50 years, multiplier cannot be applied more than 13; and on this basis pecuniary loss comes to Rs. 1,87,200/-; and with addition of other components towards treatment and funeral expenses and non-pecuniary loss, this Court is of opinion that Rs.2,25,000/- agreed to by the parties appears to be that of maximum compensation admissible in this case.

Therefore, the amount of Rs.4,35,000/- (Claim Case No.62/2003 – CMA No.524/2007); Rs.3,35,000/- (Claim Case No.65/2003 – CMA No.525/2007); and Rs.2,25,000/- (Claim Case No.61/2003 – CMA No.526/2007) agreed to by the parties deserve to be allowed towards just compensation and after deducting Rs.50,000/- already paid towards No Fault

Liability, the claimants shall be entitled for Rs.3,85,000/-, 2,85,000/- and Rs.1,75,000/- respectively with interest at the rate of 6% per annum from the date of filing of claim application.

Accordingly, these appeals succeed to the extent indicated above and with the consent of parties, the awards are modified and re-stated allowing compensation in the sum of Rs.4,35,000/- in Claim Case No.62/2003 (CMA No.524/2007), Rs.3,35,000/- in Claim Case No.65/2003 (CMA No.525/2007), and Rs.2,25,000/- in Claim Case No.61/2003 (CMA No.526/2007) to the claimants who shall be entitled to the remaining amount of Rs.3,85,000/-, Rs.2,85,000/- and Rs.1,75,000/- respectively with interest at the rate of 6% per annum from the date of filing of respective claim applications.

The insurer shall deposit the amount payable under the modified awards within 30 days from today with the Tribunal and the Tribunal shall carry out requisite apportionment and issue necessary orders for disbursement. There shall be no order as to costs of these appeals.

Though the parties have amicably settled and the appeals have accordingly been decided but before parting with these matters, this Court is constrained to put on record a note of disapproval of the process of quantification of compensation as adopted by the Tribunal that has led to these appeals. It

has been fair on the part of the parties to have agreed on reasonable amount of compensation in these cases; and it has been fairer on the part of the claimants to have agreed on reduction of the amount awarded by the Tribunal but this Court is of opinion that in the first place the Tribunal ought to have considered the law applicable for quantification of compensation and to have made the award of just and reasonable compensation. The award in question shows disregard of sound and settled principles related with the process of quantification of pecuniary loss; and the Tribunal has inexplicably proceeded to apply multipliers of 25 and 35 though time and again it has been emphasized that in such process of quantification of pecuniary loss, multiplier cannot exceed 18. The award of compensation in a vehicular accident claim case is required to be that of just compensation for the claimants for the loss suffered by them due to the accident; and the amount of just compensation ought to be arrived at by application of relevant principles; and, while the Tribunal should not deny just, proper and reasonable compensation, at the same time the Tribunal ought to guard against the propositions leading to over-compensating and making of exorbitant award.

MK **(DINESH MAHESHWARI), J.**

S.B.CIVIL MISC. APPEAL NO.525/2007
(The New India Assurance Co. Ltd. Vs. Smt.Koderi & ors.)

Date of Order :: 12th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.R.K.Mehta for the appellant-insurer
Mr.Mahendra Trivedi for the respondents-claimants

The appeal succeeds to the extent indicated. (See separate order in CMA No. 524/2007 (The New India Assurance Co.Ltd. Vs. Smt.Mamta & ors.)

BY ORDER

COURT MASTER

MK

S.B.CIVIL MISC.APPEAL NO.526/2007
(The New India Assurance Co. Ltd. Vs. Smt.Dhuli & ors.)

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BY ORDER

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